authority, so held by the courts, to conduct ''warrantless'' surveillance when it is reasonable for the surveillance for foreign intelligence purposes. This is a constitutional principle which has been established for centuries. Go back to the writings of our Founding Fathers, and from our first President, George Washington, to our current, President George Bush. Presidents have intercepted communications to determine the plans and intentions of our enemies.

A steady stream of Federal court cases has confirmed this Presidential authority, as Attorney General Gonzales pointed out on Monday before the Senate Judiciary Committee: In the face of overwhelming evidence for the President's authority, opponents retort that the President must then be breaking the law by violating the 1978 Foreign Intelligence Surveillance Act, known as FISA. But—and this is important—Congress cannot extinguish the President's constitutional authority by passing a law.

We in this body cannot take away the powers the Constitution gives the President. If the law is read in such a way as to encroach upon his constitutional authority, then I question whether that part of the FISA act would be constitutional.

This is not the first time a President has faced the issue of exercising his inherent constitutional powers for foreign intelligence surveillance in view of legislation that could be interpreted as infringing on that authority.

In 1940, President Roosevelt wrote to Attorney General Robert Jackson that despite section 605 of the Communications Act of 1934, and in this instance despite a Supreme Court ruling upholding the prohibition on electronic surveillance, President Roosevelt said he believed he had the inherent constitutional authority to authorize the Attorney General to ''secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the government of the United States, including suspected spies.''

So does the President have carte blanche with respect to foreign intelligence surveillance? The answer is clearly no. Under the fourth amendment to the Constitution, the surveillance has to be ''reasonable,'' and it does not require a warrant. In the context of a war against al-Qaida and those who would do great harm by attacks on innocent American civilians within our country and with a constitutional resolution authorizing the use of ''all necessary and appropriate force'' to prevent attacks, who is the best to determine what is and isn't ''reasonable''?

When surveying communications in real time, who is best to make that determination? A judge or a lawyer or an intelligence analyst who has spent his or her professional life observing, listening, studying, and tracking the terrorist personalities which make up groups such as al-Qaida? To me the answer is obvious: the analyst.

Consider this: If someone listened to your voice on a telephone call, who would be the best person to assess it by the voice intonation and word usage, whether it is your voice on the other end or a lawyer or someone who knows you well? Of course, the answer is the person who knows you. And I submit that the Americans who know these terrorist personalities better than anyone else are the analysts who have spent endless days over the past 4 years studying them.

Again, do the analysts have carte blanche to eavesdrop on international communications coming into or out of the United States to known suspected terrorists? No. Their decisions are reviewed by supervisors, and the program is reviewed by the NSA inspector general, the NSA general counsel, the White House Counsel, and numerous lawyers at the Justice Department who are ready to blow the whistle if they see anybody stepping out of line. The Attorney General also reviews the program, and the President reauthorizes it every 45 days with the determination that al-Qaida continues to pose a significant threat.

Did the President keep the Congress in the dark? No, he didn't. He briefed the Congress in a manner consistent with the practice of Presidents over the past century. He briefed leaders of both parties in the House and Senate and the two leaders on each Intelligence Committee, Democrats and Republicans.

These leaders were elected by their constituents to represent them in Congress and elected or appointed by their parties to serve in these incredibly important positions, so if any one of them ever questioned the legality of this program, they had the responsibility to bring the matter to the leadership, discuss it with the administration, and if necessary to cut off funding for the program through congressional authority.

The reason the President briefed the Congress was to afford them the opportunity to do exactly that. Did anyone do that? No. There was a carefully couched letter written that simply expressed concern. There was no followup, no action taken, and no mention of it at all during subsequent program briefings, according to public statements by those in attendance.

Some Members of Congress may feel slighted because they were not briefed on the program. I am on the Senate Intelligence Committee. Do I feel slighted? Absolutely not. To the contrary, I recognize that the President has to keep these very important programs top secret, which the President is doing to protect my family, my constituents, and myself. That is his responsibility.

The bottom line is that I believe congressional oversight is a vital aspect of ensuring the proper execution of matters involving national security, and I believe there was adequate oversight. We are not talking about the U.S. Government listening to phone calls from me to you or from my constituents in Missouri to their relatives in or out of State. We are talking about our best intelligence officials having the ability to assess whether al-Qaida affiliates are communicating internationally where one end of the communication takes place inside the United States and the other end takes place outside the United States, maybe discussing another attack like 9/11 on America.

These are times to stand up in arms over our civil liberties. I will do so when I believe they are infringed upon. This is not one.

I thank my colleagues for their indulgence, and I yield the floor.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Senate will resume consideration of S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Mr. FRIST. With the authority of the majority of the Judiciary Committee, I withdraw the committee amendments, and I send a substitute amendment to the desk.

The PRESIDING OFFICER. The committee amendments are withdrawn.

AMENDMENT NO. 2746

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. SPECTER and Mr. LEAHY, proposes an amendment numbered 2746.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. DURBIN. I ask for the yeas and nays on the substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.